In the

Supreme Court of the United States

Appellate Docket

October Term, 1962

No. 629

ALFRED J. HAUSFELD,

Petitioner,

vs.

ROBERT N. ZIEGLER,

Respondent.

PETITION FOR RE-HEARING

Petitioner asks this Court to rehear, reconsider, and set aside its judgment, heretofore made herein, denying certiorari in this case on February 18, 1963 — US — for the following reasons, to-wit:

This case is "certworthy" and here is why it is:

This decision is going to make the rounds of lawyers and the public and lawyers are going to get the erroneous idea they can give any kind of advice that they feel like giving in divorce cases and get away with it — no legal liability will attach itself to them at all.

And the public, once it has learned of this decision — and it will — will lose what little confidence it has left in the legal profession.

All that Petitioner asks is: give me my day in Court: let me be heard: let me present my case to a jury: and if I

lose on the merits, that is one thing but don't deny to me the opportunity to proving my case.

All of the statements in all of the cases that a denial of certiorari merely means that four members of this Court don't feel that the case should be heard by this Court and expresses no opinion as to the merits of the case itself make a legal fairy tale. Even this Court, when the chips are down, doesn't subscribe to that view. Before any Justice of this Court feels that this is a contumacious statement let him look at the decision of this Court in *Chessman* v. *California*, 348 US 864. In *Chessman* v. *California*, 348 US 864, this Court denied certiorari without prejudice to the filing of a Writ of Habeas Corpus in an appropriate United States District Court. If this Court itself believed that a denial of certiorari meant nothing as a matter of law, so far as the merits of the case are concerned, there would have been no legal reason — and this Court certainly does not act without a legal reason to justify its actions — for this Court to go out of its way to state and to state specifically that a denial of certiorari is not an expression on the merits of the case and is not a bar to any other action. Only the awareness that this Court has for universal opinion of the Bench and the Bar as a whole that a denial of certiorari by this Court is an opinion on the merits would cause this Court to decide *Chessman* v. *California*, 348 US 864, as it did.

But Chessman is, or was, in a better position, legally speaking, than this Petitioner. Not only was his certiorari denied without prejudice, but this Court pointed the way for further relief by inviting the lower Courts not to construe the denial of certiorari as being a bar to any further collateral action taken by Chessman. *Chessman* v. *California*, 348 US 864. But this Petitioner cannot take further action once certiorari is denied. He certainly cannot file a Writ of Habeas Corpus and, so far as he is concerned,

his case was dismissed and he never had a chance to present his case to a trial court on the merits.

Carrying this a step further, once Chessman filed his Petition for a Writ of Habeas Corpus, as this Court invited him to do, *Chessman* v. *California*, 348 US 864, the District Court and the Circuit Court of Appeals dismissed the Petition without a hearing, the same as was done in this case; and this Court, holding that none of the allegations in Chessman's petition being controverted on the record before it, reversed the District Court, 128 Fed. Supp. 600, and the Circuit Court, 221 Fed. (2d) 276, and ordered the case back to the District Court for trial on the merits. *Chessman* v. *Teets*, 350 US 3. Now, it is very possible and it has happened, for this Court to deny direct relief on certiorari and then to grant the identical relief sought for on Habeas Corpus and to take both actions in the same case on the same record. *Leyra* v. *Denno*, 347 US 556. Hence the finality — for practical purposes — of an unqualified denial of certiorari becomes apparent here. Denial of certiorari decides this case on the merits.

But, thanks to the action of this Court in this case, this Petitioner is not as fortunate as either Chessman or Leyra; in fact, this Court is not giving to him the same Constitutional rights that were given to Chessman and to Leyra. Chessman eventually received his hearing and lost the case by dying in the gas chamber; Leyra was denied certiorari and won the case by having this Court — on the same record on which it denied certiorari — grant a writ of Habeas Corpus; and eventually the New York Courts freed him. So Chessman died and Leyra lived — *but both had one* advantage that is denied to this Petitioner — both had their day in Court and both had the chance to be heard on the merits of their respective cases. But this Petitioner is denied that right. All are heard but him.

By denying certiorari in this case, this Court is reversing *Chessman* v. *California*, 348 US 864; *Chessman* v. *Teets*, 350 US 3, and *Leyra* v. *Denno*, 347 US 556.

All that Petitioner asks this Court to do is to adhere to its previous rulings in *Chessman* v. *California*, 348 US 864; *Chessman* v. *Teets*, 350 US 3 and the rationale underlying the decision in *Lyria* v. *Denno*, 347 US 556, and order this case heard on the merits. There is nothing before the Court to controvert the allegations set forth in Petitioner's Petition, see Appendix "A", Petition for a Writ of Certiorari heretofore filed by the Petitioner herein. *Chessman* v. *Teets*, 350 US 3.

And lest there be any doubt that the constitutional question was properly raised in the trial Court — and that is basic to a grant of certiorari by this Court — this Court is referred not only to *Tumey* v. *Ohio*, 273 US 510, but also to *Karam* v. *McElroy*, 116 OA 288, reported in Ohio Bar for February 4, 1963, Vol. XXXVI, #5 (The Ohio Bar is published by the Ohio State Bar Association and contains the advance sheets of Ohio Appellate Decisions before said decisions reach the bound volumes). In *Karam* v. *McElroy*, 116 OA 288, Ohio Bar for February 4, 1963, Vol. XXXVI, No. 5, the right of an Ohio litigant to stand on the validity of a pleading and to seek relief from an erroneous ruling by appeal — as has been done in this case — has been re-emphasized as being an integral part of Ohio law, both substantive and procedural.

In the *Chessman* case, Chessman claimed that he was "robbed" — fraud had been practiced upon him. And since there were no allegations to controvert the claim in the record before this Court, this Court not only went out of its way to eradicate the popular belief that denial of certiorari is an expression of an opinion on the merits of the case but also ordered that the claim of fraud be

heard on the merits. *Chessman* v. *California*, 348 US 864, *Chessman* v. *Teets*, 350 US 3.

And, in the present case, the petitioner claims that he also was "robbed". To make a fee a lawyer *maliciously* told Petitioner's wife not to reconcile with him. And there is nothing in the record before this Court to controvert Petitioner's allegations. Yet, in the one case, *Chessman*, relief was granted, and in this case relief denied and denied finally. Why the distinction between this case and *Chessman* v. *Teets*, 350 US 3?

The order denying certiorari should be vacated; certiorari should be granted; and this case should be sent back to the Ohio Courts for trial on the merits.

All of which is respectfully submitted by.

MELVIN EDWARD SCHAENGOLD
Attorney for Petitioner.

CERTIFICATE OF COUNSEL

I, Melvin Edward Schaengold, Attorney for the Petitioner herein, certify that the foregoing Petition for Rehearing is filed by me in good faith; that it is restricted to the grounds stated and contained therein; and that it is not filed for the purposes of delay.

MELVIN EDWARD SCHAENGOLD